

1 AMENDMENT TO SENATE BILL 309

2 AMENDMENT NO. _____. Amend Senate Bill 309 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Pension Code is amended by
5 changing Section 1-119 as follows:

6 (40 ILCS 5/1-119)

7 Sec. 1-119. Qualified Illinois Domestic Relations
8 Orders.

9 (a) For the purposes of this Section:

10 (1) "Alternate payee" means the spouse, former
11 spouse, child, or other dependent of a member, as
12 designated in a QILDRO.

13 (2) "Death benefit" means a any nonperiodic benefit
14 payable upon the death of a member to a survivor of the
15 member or to the member's estate or designated
16 beneficiary, including any refund of contributions
17 following the member's death, whether or not the benefit
18 is so called under the applicable Article of this Code.

19 (3) "Disability benefit" means any periodic or
20 nonperiodic benefit payable to a disabled member based on
21 occupational or nonoccupational disability or disease,
22 including any periodic or nonperiodic increases in the

1 benefit, whether or not the benefit is so called under
2 the applicable Article of this Code.

3 (4) "Member" means any person who participates in
4 or has service credits in a retirement system, including
5 a person who is receiving or is eligible to receive a
6 retirement or disability benefit, without regard to
7 whether the person has withdrawn from service.

8 (5) "Member's refund" means a return of all or a
9 portion of a member's contributions that is elected by
10 the member (or provided by operation of law) and is
11 payable before the member's death.

12 (6) "Qualified Illinois Domestic Relations Order"
13 or "QILDRO" means an Illinois court order that creates or
14 recognizes the existence of an alternate payee's right to
15 receive all or a portion of a member's accrued benefits
16 in a retirement system, is issued pursuant to this
17 Section and Section 503(b)(2) of the Illinois Marriage
18 and Dissolution of Marriage Act, and meets the
19 requirements of this Section. A QILDRO is not the same
20 as a qualified domestic relations order or QDRO issued
21 pursuant to Section 414(p) of the Internal Revenue Code
22 of 1986. The requirements of paragraphs (2) and (3) of
23 that Section do not apply to orders issued under this
24 Section and shall not be deemed a guide to the
25 interpretation of this Section; a QILDRO is intended to
26 be a domestic relations order within the meaning of
27 paragraph (11) of that Section.

28 (7) "Regular payee" means the person to whom a
29 benefit would be payable in the absence of an effective
30 QILDRO.

31 (8) "Retirement benefit" means any periodic or
32 nonperiodic benefit payable to a retired member based on
33 age or service, or on the amounts accumulated to the
34 credit of the member for retirement purposes, including

1 any periodic or nonperiodic increases in the benefit,
2 whether or not the benefit is so called under the
3 applicable Article of this Code.

4 (9) "Retirement system" or "system" means any
5 retirement system, pension fund, or other public employee
6 retirement benefit plan that is maintained or established
7 under any of Articles 2 through 18 of this Code.

8 (10) "Surviving spouse" means the spouse of a
9 member at the time of the member's death.

10 (11) "Survivor's benefit" means any periodic
11 benefit payable to a surviving spouse, child, parent, or
12 other survivor of a deceased member, including any
13 periodic or nonperiodic increases in the benefit, whether
14 or not the benefit is so called under the applicable
15 Article of this Code.

16 (b) (1) An Illinois court of competent jurisdiction in a
17 proceeding for declaration of invalidity of marriage, legal
18 separation, or dissolution of marriage that provides for the
19 distribution of property, or any proceeding to amend or
20 enforce such a property distribution, may order that all or
21 any part of any (i) retirement benefit or (ii) member's
22 refund payable to or on behalf of the member be instead paid
23 by the retirement system to a designated alternate payee.

24 (2) An order issued under this Section provides only for
25 the diversion to an alternate payee of certain benefits
26 otherwise payable by the retirement system under the
27 provisions of this Code. The existence of a QILDRO shall not
28 cause the retirement system to pay any benefit, or any amount
29 of benefit, to an alternate payee that would not have been
30 payable by the system to a regular payee in the absence of
31 the QILDRO.

32 (3) A QILDRO shall not affect the vesting, accrual, or
33 amount of any benefit, nor the date or conditions upon which
34 any benefit becomes payable, nor the right of the member or

1 the member's survivors to make any election otherwise
2 authorized under this Code, except as provided in subsections
3 (i) and (j).

4 (4) A QILDRO shall not apply to or affect the payment of
5 any survivor's benefit, death benefit, disability benefit,
6 life insurance benefit, or health insurance benefit.

7 (c) (1) A QILDRO must contain the name, residence
8 address, and social security number of the member and of the
9 alternate payee and must identify the retirement system to
10 which it is directed and the court issuing the order.

11 (2) A QILDRO must specify each benefit to which it
12 applies, and it must specify the amount of the benefit to be
13 paid to the alternate payee, which in the case of a
14 nonperiodic benefit shall be expressed as a dollar amount,
15 and in the case of a periodic benefit shall be expressed as a
16 dollar amount per month.

17 (3) With respect to each benefit to which it applies, a
18 QILDRO must specify when the order will take effect. In the
19 case of a periodic benefit that is being paid at the time the
20 order is received, a QILDRO shall take effect immediately or
21 on a specified later date; if it takes effect immediately, it
22 shall become effective on the first benefit payment date
23 occurring at least 30 days after the order is received by the
24 retirement system. In the case of any other benefit, a
25 QILDRO shall take effect when the benefit becomes payable.
26 However, in no event shall a QILDRO apply to any benefit paid
27 by the retirement system before or within 30 days after the
28 order is received. A retirement system may adopt rules to
29 prorate the amount of the first and final periodic payments
30 to an alternate payee.

31 (4) A QILDRO must also contain any provisions required
32 under subsection (n) or (p).

33 (d) (1) An order issued under this Section shall not be
34 implemented unless a certified copy of the order has been

1 filed with the retirement system. The system shall promptly
2 notify the member and the alternate payee by first class mail
3 of its receipt of the order.

4 (2) Neither the retirement system, nor its board, nor
5 any of its employees shall be liable to the member, the
6 regular payee, or any other person for any amount of a
7 benefit that is paid in good faith to an alternate payee in
8 accordance with a QILDRO.

9 (3) At the time the order is submitted to the retirement
10 system, it shall be accompanied by a nonrefundable \$50
11 processing fee payable to the retirement system, to be used
12 by the system to defer any administrative costs arising out
13 of the implementation of the QILDRO.

14 (e) (1) Each alternate payee is responsible for
15 maintaining a current residence address on file with the
16 retirement system. The retirement system shall have no duty
17 to attempt to locate any alternate payee by any means other
18 than sending written notice to the last known address of the
19 alternate payee on file with the system.

20 (2) In the event that the system cannot locate an
21 alternate payee when a benefit becomes payable, the system
22 shall hold the amount of the benefit payable to the alternate
23 payee and make payment to the alternate payee if he or she is
24 located within the following 180 days. If the alternate
25 payee has not been located within 180 days from the date the
26 benefit becomes payable, the system shall pay the benefit and
27 the amounts held to the regular payee. If the alternate
28 payee is subsequently located, the system shall thereupon
29 implement the QILDRO, but the interest of the alternate payee
30 in any amounts already paid to the regular payee shall be
31 extinguished. Amounts held under this subsection shall not
32 bear interest.

33 (f) (1) If the amount of a benefit that is specified in
34 a QILDRO for payment to an alternate payee exceeds the

1 actual amount of that benefit payable by the retirement
2 system, the excess shall be disregarded. The retirement
3 system shall have no liability to any alternate payee or any
4 other person for the disregarded amounts.

5 (2) In the event of multiple QILDROs against a member,
6 the retirement system shall honor all of the QILDROs to the
7 extent possible. However, if the total amount of a benefit
8 to be paid to alternate payees under all QILDROs in effect
9 against the member exceeds the actual amount of that benefit
10 payable by the system, the QILDROs shall be satisfied in the
11 order of their receipt by the system until the amount of the
12 benefit is exhausted, and shall not be adjusted pro rata.
13 Any amounts that cannot be paid due to exhaustion of the
14 benefit shall remain unpaid, and the retirement system shall
15 have no liability to any alternate payee or any other person
16 for such amounts.

17 (3) A modification of a QILDRO shall be filed with the
18 retirement system in the same manner as a new QILDRO. A
19 modification that does not increase the amount of any benefit
20 payable to the alternate payee, and does not expand the
21 QILDRO to affect any benefit not affected by the unmodified
22 QILDRO, does not affect the priority of payment under
23 subdivision (f)(2); the priority of payment of a QILDRO that
24 has been modified to increase the amount of any benefit
25 payable to the alternate payee, or to expand the QILDRO to
26 affect a benefit not affected by the unmodified QILDRO, shall
27 be based on the date on which the system receives the
28 modification of the QILDRO.

29 (g) (1) Upon the death of the alternate payee under a
30 QILDRO, the QILDRO shall expire and cease to be effective,
31 and in the absence of another QILDRO, the right to receive
32 any affected benefit shall revert to the regular payee.

33 (2) All QILDROs relating to a member's participation in
34 a particular retirement system shall expire and cease to be

1 effective upon the issuance of a member's refund that
2 terminates the member's participation in that retirement
3 system, without regard to whether the refund was paid to the
4 member or to an alternate payee under a QILDRO. An expired
5 QILDRO shall not be automatically revived by any subsequent
6 return by the member to service under that retirement system.

7 (h) (1) Within 45 days after receiving a subpoena from
8 any party to a proceeding for declaration of invalidity of
9 marriage, legal separation, or dissolution of marriage in
10 which a QILDRO may be issued, or after receiving a request
11 from the member, a retirement system shall issue a statement
12 of a member's accumulated contributions, accrued benefits,
13 and other interests in the plan administered by the
14 retirement system based on the data on file with the system
15 on the date the subpoena is received, and of any relevant
16 procedures, rules, or modifications to the model QILDRO form
17 that have been adopted by the retirement system.

18 (2) In no event shall the retirement system be required
19 to furnish to any person an actuarial opinion as to the
20 present value of the member's benefits or other interests.

21 (3) The papers, entries, and records, or parts thereof,
22 of any retirement system may be proved by a copy thereof,
23 certified under the signature of the secretary of the system
24 or other duly appointed keeper of the records of the system
25 and the corporate seal, if any.

26 (i) In a retirement system in which a member or
27 beneficiary is required to apply to the system for payment of
28 a benefit, the required application may be made by an
29 alternate payee who is entitled to all of that benefit under
30 a QILDRO, provided that all other qualifications and
31 requirements have been met. However, the alternate payee may
32 not make the required application for a member's refund or a
33 retirement benefit if the member is in active service or
34 below the minimum age for receiving an undiscounted

1 retirement annuity in the retirement system that has received
2 the QILDRO or in any other retirement system in which the
3 member has creditable service and in which the member's
4 rights under the Retirement Systems Reciprocal Act would be
5 affected as a result of the alternate payee's application for
6 a member's refund or retirement benefit.

7 (j) (1) So long as there is in effect a QILDRO relating
8 to a member's retirement benefit, the affected member may not
9 elect a form of payment that has the effect of diminishing
10 the amount of the payment to which any alternate payee is
11 entitled, unless the alternate payee has consented to the
12 election in writing and this consent has been filed with the
13 retirement system.

14 (2) If a member attempts to make an election prohibited
15 under subdivision (j)(1), the retirement system shall reject
16 the election and advise the member of the need to obtain the
17 alternate payee's consent.

18 (3) If a retirement system discovers that it has
19 mistakenly allowed an election prohibited under subdivision
20 (j)(1), it shall thereupon disallow that election and
21 recalculate any benefits affected thereby. If the system
22 determines that an amount paid to a regular payee should have
23 been paid to an alternate payee, the system shall, if
24 possible, recoup the amounts as provided in subsection (k) of
25 this Section.

26 (k) In the event that a regular payee or an alternate
27 payee is overpaid, the retirement system shall recoup the
28 amounts by deducting the overpayment from future payments and
29 making payment to the other payee. The system may make
30 deductions for recoupment over a period of time in the same
31 manner as is provided by law or rule for the recoupment of
32 other amounts incorrectly disbursed by the system in
33 instances not involving a QILDRO. The retirement system
34 shall incur no liability to either the alternate payee or the

1 regular payee as a result of any payment made in good faith,
2 regardless of whether the system is able to accomplish
3 recoupment.

4 (1) (1) A retirement system that has, before the
5 effective date of this Section, received and implemented a
6 domestic relations order that directs payment of a benefit to
7 a person other than the regular payee may continue to
8 implement that order, and shall not be liable to the regular
9 payee for any amounts paid in good faith to that other person
10 in accordance with the order.

11 (2) A domestic relations order directing payment of a
12 benefit to a person other than the regular payee that was
13 issued by a court but not implemented by a retirement system
14 prior to the effective date of this Section shall be void.
15 However, a person who is the beneficiary or alternate payee
16 of a domestic relations order that is rendered void under
17 this subsection may petition the court that issued the order
18 for an amended order that complies with this Section.

19 (m) (1) In accordance with Article XIII, Section 5 of
20 the Illinois Constitution, which prohibits the impairment or
21 diminishment of benefits granted under this Code, a QILDRO
22 issued against a member of a retirement system established
23 under an Article of this Code that exempts the payment of
24 benefits or refunds from attachment, garnishment, judgment or
25 other legal process shall not be effective without the
26 written consent of the member if the member began
27 participating in the retirement system on or before the
28 effective date of this Section. That consent must specify
29 the retirement system, the court case number, and the names
30 and social security numbers of the member and the alternate
31 payee. The consent must accompany the QILDRO when it is
32 filed with the retirement system, and must be in
33 substantially the following form:

34 CONSENT TO ISSUANCE OF QILDRO

1 Court Case Number:
2 Member's Social Security Number:
3 Alternate payee's Social Security Number:

4 I, (name), a member of the (retirement system), hereby
5 consent to the issuance of a Qualified Illinois Domestic
6 Relations Order. I understand that under the Order, certain
7 benefits that would otherwise be payable to me, or to my
8 surviving spouse or estate, will instead be payable to (name
9 of alternate payee). I also understand that my right to
10 elect certain forms of payment of my retirement benefit or
11 member's refund may be limited as a result of the Order.

12 DATED:.....
13 SIGNED:.....

14 (2) A member's consent to the issuance of a QILDRO shall
15 be irrevocable, and shall apply to any QILDRO that pertains
16 to the alternate payee and retirement system named in the
17 consent.

18 (n) An order issued under this Section shall be in
19 substantially the following form (omitting any provisions
20 that are not applicable):

21 QUALIFIED ILLINOIS DOMESTIC RELATIONS ORDER

22 THIS CAUSE coming before the Court for the purpose of the
23 entry of a Qualified Illinois Domestic Relations Order under
24 the provisions of Section 1-119 of the Illinois Pension Code,
25 the Court having jurisdiction over the parties and the
26 subject matter hereof; the Court finding that one of the
27 parties to this proceeding is a member of a retirement system
28 subject to Section 1-119 of the Illinois Pension Code, this
29 Order is entered to implement a division of that party's
30 interest in the retirement system; and the Court being fully
31 advised;

32 IT IS HEREBY ORDERED AS FOLLOWS:

33 (1) The definitions and other provisions of Section

1 1-119 of the Illinois Pension Code are adopted by reference
2 and made a part of this Order.

3 (2) Identification of Retirement System and parties:

4 Retirement System: (name and address)

5 Member: (name, residence address and social security
6 number)

7 Alternate payee: (name, residence address and social
8 security number)

9 (3) The Retirement System shall pay the indicated
10 amounts of the following specified benefits to the alternate
11 payee under the following terms and conditions:

12 (i) Of the member's retirement benefit, the
13 Retirement System shall pay to the alternate payee
14 \$..... per month, beginning (if the benefit is already
15 being paid, either immediately or on a specified later
16 date; otherwise, on the date the retirement benefit
17 commences), and ending upon the termination of the
18 retirement benefit or the death of the alternate payee,
19 whichever occurs first.

20 (ii) Of any member's refund that becomes payable,
21 the Retirement System shall pay to the alternate payee
22 \$..... when the member's refund becomes payable.

23 (4) In accordance with subsection (j) of Section 1-119
24 of the Illinois Pension Code, so long as this QILDRO is in
25 effect, the member may not elect a form of payment of the
26 retirement benefit that has the effect of diminishing the
27 amount of the payment to which the alternate payee is
28 entitled, unless the alternate payee has consented to the
29 election in writing and this consent has been filed with the
30 retirement system.

31 (5) If the member began participating in the Retirement
32 System before the effective date of this Section, this Order
33 shall not take effect unless accompanied by the written
34 consent of the member as required under subsection (m) of

1 Section 1-119 of the Illinois Pension Code.

2 (6) The Court retains jurisdiction to modify this Order.

3 DATED:.....

4 SIGNED:.....

5 (o) (1) A court in Illinois that has issued a QILDRO
6 shall retain jurisdiction of all issues relating to the
7 modification of the QILDRO. The Administrative Review Law
8 and the rules adopted pursuant thereto shall govern and apply
9 to all proceedings for judicial review of final
10 administrative decisions of the board of trustees of the
11 retirement system arising under this Section.

12 (2) The term "administrative decision" is defined as in
13 Section 3-101 of the Code of Civil Procedure. The venue for
14 review under the Administrative Review Law shall be the same
15 as is provided by law for judicial review of other
16 administrative decisions of the retirement system.

17 (p) (1) Each retirement system may adopt any procedures
18 or rules that it deems necessary or useful for the
19 implementation of this Section.

20 (2) Each retirement system may by rule modify the model
21 QILDRO form provided in subsection (n) or require that
22 additional information be included in QILDROs presented to
23 the system, as may be necessary to meet the needs of the
24 retirement system.

25 (Source: P.A. 90-731, eff. 7-1-99.)".